

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CHRISTINA BOWNE,

Plaintiff,

v.

KS-VAP, PC d/b/a KOOL SMILES,

Case No.: 2:10-cv-327

KOOL SMILES VAN, PC

and

NCDR, L.L.C.,

Defendants.

**BRIEF IN SUPPORT OF
OBJECTION TO REMOVAL AND MOTION TO REMAND**

COMES NOW the plaintiff, Christina Bowne, by counsel, and, in support of her Objection to Removal of the above-captioned case from the Circuit Court for the City of Portsmouth, Virginia, to the United States District Court for the Eastern District of Virginia, and her Motion made pursuant to 28 U.S.C. § 1447 that said action be remanded to the Circuit Court for the City of Portsmouth, Virginia, on the grounds that the Federal Court lacks subject matter jurisdiction over her action under 28 U.S.C. § 1441(b), respectfully avers as follows:

1. Plaintiff brought suit in the Circuit Court for the City of Portsmouth, Virginia, against, *inter alia*, KS-VAP, PC, d/b/a Kool Smiles, which is a Virginia Corporation, incorporated under the laws of the Commonwealth of Virginia on February 17, 2006 and

currently in good standing, licensed to do business within the City of Portsmouth, Virginia, and doing business at its principal place of business of 4072 Victory Boulevard, Portsmouth, Virginia. *See, Complaint, ¶ 2; and Answer, ¶ 2* (admitting said information).

2. Plaintiff was employed as the Office Manager of Defendant KS-VAP, PC, d/b/a Kool Smiles, in the City of Portsmouth, Virginia. *See, Complaint, ¶ 1; and Answer, ¶ 1* (admitting said information).

3. Plaintiff also brought suit against Kool Smiles VAN, P.C., also a Virginia Corporation, incorporated under the laws of the Commonwealth of Virginia and currently in good standing. *See, Complaint, ¶ 2; and Answer, ¶ 2* (admitting said information). Plaintiff further alleges that said Defendant owns, operates, manages, and/or controls Defendant KS-VAP, PC, d/b/a Kool Smiles. *See, Complaint, ¶ 2.*

4. Plaintiff also alleges in her Complaint that Defendant KS-VAP, PC, d/b/a Kool Smiles was and is the agent and/or subsidiary of Defendant NCDR, L.L.C. *See, Complaint, ¶ 2.*

5. Defendant NCDR, L.L.C., the entity which actually paid Plaintiff's wages, is the provider of non-clinical support services to dental practices owned, operated, managed and/or controlled by Defendant Kool Smiles VAN, PC, including Defendant KS-VAP, PC, d/b/a Kool Smiles, and is part of the oral and maxillofacial surgeon's office and healthcare institution which is Defendant KS-VAP, PC d/b/a Kool Smiles in the City of Portsmouth, Virginia, and subject to the laws and regulations of the Commonwealth of Virginia and the Virginia Department of Health and Dentistry. *See, Complaint, ¶ 4; and Answer, ¶ 4* (admitting in part said information).

6. Plaintiff will prove, after the opportunity of conducting full discovery, that Defendants NCDR, L.L.C., and Kool Smiles, PC, d/b/a Kool Smiles, a subsidiary of Kool

Smiles, VAN, PC, act in such consort with each other as to behave as one entity engaged in the business of dentistry.

7. The wrongful acts and omissions alleged by the plaintiff were committed by personnel whose wages are paid by Defendants NCDR, L.L.C., Kool Smiles, PC, d/b/a Kool Smiles, and/or NCDR, L.L.C. Thus, all three defendants are parties in interest.

8. Plaintiff has not "fraudulently joined" Defendants KS-VAP, PC, d/b/a Kool Smiles or Kool Smiles, Van, PC; on the contrary, both defendants, both Virginia citizens, are parties in interest, and who have been properly joined.

Respectfully submitted,

CHRISTINA BOWNE

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2010, the foregoing BRIEF IN SUPPORT OF OBJECTION TO REMOVAL AND MOTION TO REMAND will be electronically filed with the Clerk of the Court using this CM/ECF system, which will then send a notification of such

filng (NEF) to the following:

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